
IN MEMORIAM, DANIEL S. LEV, 1933–2006

Dan S. Lev passed away five years ago. He left a gaping hole that is impossible to fill. Those close to him, and there were many, miss his friendship, advice, and trust. His knowledge, experience, and authority are sorely missed in the academic community, legal institutions and professions, and civil society in Indonesia. We will not find someone who can speak as clearly and forcefully, with as much historical perspective and authority, on legal-political issues in Indonesia. Most of all, we miss his integrity. The real significance of his person, the prism through which all else acquired that unique quality, is that Dan refused to distinguish between his academic and political engagement. He was devoid of petty self-interest, and it was through his actions that he demonstrated his unique value.

Dan was born in a working family that lived on the rough side of town, a source of quiet pride. Youngstown, Ohio, was, for a time, the most corrupt and criminal city of the United States, as Dan would cheerfully recall. Perhaps it was this background that gave Dan a soft spot for the right kind of rascals with whom he could get along famously, as well as a deep dislike for sly, manipulative characters. He would tell stories about city corruption and how Irish, Italian, and Jewish gangs would fight it out on the streets of Youngstown during his youth. He did some boxing himself in his day, even if it is not fully clear how he applied that skill outside the ring. While stocky and agile, he never came across as a very physical man.

His parents had escaped the misery of the Pale and the vicious discrimination of Europe. When a young adolescent, his mother, all by herself, had walked from the depths of Russia to the coast and worked her way across to the United States. Dan never said much about it, for after all, "every second family in the US has a similar family background," as Arlene, his wife, would comment—her own grandfather had been held in bondage-like conditions in Eastern Europe, escaped, and traveled the same route when a boy. Perhaps like most immigrants, Dan's parents were not much given to looking back. Even so, a young girl walking to the end of the earth in search of an ideal, against the backdrop of that looming disaster, remains a glorious image.

Dan's recollections of his Youngstown days were pretty down to earth. He would comment that one of the traditions that his mother had taken from the old continent included very poor cooking—"shoving a chicken in the oven until it burned." This perhaps explains why Dan loved good food, yet would also eat almost anything uncomplainingly, even my own cooking. Dan was a weak and sickly child, and recalled not being given a name as a toddler to deter the evil eye (his parents called him "the boy," which must have been confusing in a family of five boys, until Dan began to notice and asked them his true name), and at one point he found lucky coins

sown in his pillow cover. He learned about kosher only when he was thrown out for eating a hearty ham sandwich in a Youngstown synagogue, where he did a carpentry job with his father. You fool, his father said with a grin when he found him on his backside in the street, and told him about kosher rules. They never stuck—decades later one of Dan’s great joys when visiting Ong Hok Ham’s famous house parties, besides the good company and the good whiskey, was the traditional suckling pig.

He was a carpenter’s son, the youngest of five brothers. He loved his father, who barely ever spoke a harsh word to him, and Dan named his son after his father. It was a bustling household, with a fair bit of competition among the boys, who were taught early on to stand on their own feet. The boys turned out different in many ways. Some stuck with the world of the father, of wood and building. Another became a prominent lawyer. They covered much of the political spectrum. The brothers could disagree vehemently and openly about almost anything, and generally did. This was a feisty family culture that had little patience with defensiveness or self-pity. It is surprising that this turned out a man so considerate, generous, and gentle.

There is an interesting picture of Dan from those early days, sitting at a table at a game of cards, a black curl over his forehead, smoky cigarette in his hand, and whisky glass on the table, wearing a white shirt with sleeves rolled up high. It shows a man almost consciously handsome and cool, somewhere between James Dean and Humphrey Bogart. This is Dan, but to those of us who only knew him at an older age, he is hard to recognize. There is a gap between the man in the picture and the older Dan, who was all substance and averse to appearances and pretense. The road from Youngstown had been a long one.

He traveled that road in outstanding company, but even so, Dan was a self-made man. His love of classical music (with a penchant for the opera), his understanding of European history (including discussions about how British sheep generated capitalism) and affinity with the continent, and his language versatility (including a curious affection for the Dutch word “*gek*,” spoken with a very guttural “g,” as if to affirm the madness of it all) had many sources. There may have been some Yiddish at home, a European element at Cornell (Herb Feith from Vienna, Harry Benda from Prague, Claire Holt from Riga and Moscow, Ben Anderson from Ireland, and so forth), and Arlene, of course, who was much into art, literature, and music. The Lev household was a cultural hub. Son Louis became an accomplished, professional violinist. Daughter Claire (named after Claire Holt) was a proficient cellist. But in the end, Dan picked it all up as he went along, driven by curiosity, a desire to know, a wish to explain, a need to share.

Arlene recounts that three persons, in particular, influenced Dan the most: George Kahin, Besar Martokusumo, and Yap Thiam Hien.

Dan Lev came to Cornell in 1956, where he met and married Arlene. It was that glorious period in the 1950s and 60s—when the Cornell Modern Indonesia Project was housed in the ramshackle building at 102 West Avenue—about which a good deal has been written. Dan and Arlene refer to their companions in the Southeast Asia Program as a “cohesive company of graduate students, few of whom, probably, ever found that kind of community again.” They included the first generation of brilliant scholars, such as Herb Feith, Harry Benda, and Claire Holt, who had been in Indonesia and would

write their seminal work at Cornell as Dan came in. Dan was later joined by Ben Anderson, Ruth McVey, John Smail, Audrey Kahin, and others, and a group of brilliant Indonesians that included Soemarsaid Moertono. The bright star who pulled this exquisite group together was George Kahin, who probably influenced Dan the most. For outsiders, it is impossible to do justice to George Kahin, or even begin to describe the depths of the respect and affection in which the students held "Pak" Kahin (as some call him even now), and how it all shaped them. George Kahin kindled Dan's interest in Indonesia. But Kahin's deeper contribution was in the standards he set on academic and political ethics. Dan said it himself: George Kahin refused to distinguish between "demands of scholarship and public engagement." "They were bound up with one another inextricably by a powerful sense of intellectual and personal responsibility unfettered by anything like a hungry ego. He was ... a genuinely moral man with a sense of justice the size of Mt. Everest."¹ After all these years, it is striking how well these terms describe Dan himself.

Dan and Arlene conducted their first field trip to Indonesia in 1958–60. During that trip, Dan was taken in by the Martokusumo family. Dan and Arlene remained in close contact with the Martokusumos, children and grandchildren included, throughout the years. Besar Martokusumo also made a lasting impression on Dan. Besar, who was among the first Indonesian lawyers/advocates, was unhappy about joining the colonial bureaucracy and therefore became an advocate. He moved to the administration during the Japanese occupation as mayor of Tegal, and at independence became the first secretary-general of the Department of Justice. Dan arrived right at the time parliamentary democracy was collapsing, and Besar gave Dan a unique inside view into how that evolved, including the erosion of the rule of law and independent legal institutions and professions.

Dan met Yap Thiam Hien in the early 1960s, sometime before Yap became a national figure during the political trials in the 1960s. Dan's notes, which do not often comment on the persons he interviewed, make an exception for Yap. "A truly remarkable, modest, intelligent, and humane man." (August 21, 1971) Dan and Yap hit it off famously and must have been quite a pair. There are accounts of the two of them dissecting the world in Dan's Seattle living room, with Yap gesticulating and literally jumping up and down to make a point, and Dan wondering whether to join the dance or to settle him down. Dan greatly admired Yap's commitment and courage, and sometimes liked to believe that Yap did not win a single case during his forty years as a lawyer, presenting him somewhat like the indomitable David lobbing pebbles at the ogre of state. This is not quite true, happily for Yap, who after all needed to make a living, too. But Dan's point was that this was a man who was engaged to the full, against all odds. "What a great soul this man has!" (Daniel Lev's notes, November 3, 1971.)

Dan followed the way charted by George Kahin and the others. It never was the easier route. His engagement against the Vietnam War cost him his tenure at Berkeley, in a typical case of shabby academic politicking. He moved to Seattle, where he and Arlene bought the lovely house with the big fir tree on 936 12th Avenue East, which was to be their home for the decades that followed. The house turned out to be a great

¹ "George McT. Kahin, (1918–2000)," *Inside Indonesia*, April 3, 2000.

investment by accident (for Dan did not have a clue about money, or care about it), and they ended up with Microsoft managers as neighbors. The house was warm and welcoming, and their many friends stayed there over the years. Notable were Dan's bustling study, the great kitchen with a view of the lovely garden, the curvy piano, the booming heater, and Dan's damn cigarettes hidden in the garage. Seattle and the University of Washington became home.

It is there that his scholarship came to fruition. That scholarship is rich and varied. It covers various countries and topics, even if the focus clearly is on Indonesia. It is precise and carefully considered.

Dan is one of the precursors in the field of the social-political analysis of law. He belonged to the first generation of scholars who bridged the traditional divide between legal and political science, according to which lawyers viewed their discipline as an autonomous domain, and political scientists looked at the law as the end product of power relations and therefore, in essence, irrelevant ("do constitutions matter?"). Dan applied political science to the legal field, using power relations as instruments to analyze legal institutions and the law. At the same time, he recognized legal institutions and practitioners as actors in their own right. He therefore took the view that the legal system could impose itself, through its institutions and professions and basic concepts. In this, Dan heralded political science developments in the 1970s, which found that constitutions, in fact, do matter. This approach was particularly relevant for Indonesia after 1957, when legal institutions and professions lost their autonomy, were little more than extensions of the political elites, and could only be understood through that lens. Some might argue that this condition has remained essentially unchanged to the present day.

In Dan's view, which is now generally accepted, the response must be to restore the autonomy of legal institutions and the legal professions. His decades-long struggle to restore the unified Bar in Indonesia and strengthen its courts must be seen in that light. What this also meant, as we discovered after 1998, was that legal institutions and professions had to be rebuilt from the ground up. This brought Dan to sometimes propose quite drastic steps, such as firing the entire Supreme Court, which was rooted in the old regime. He would argue for this often and vocally, to the point that the Indonesian press and parliament would refer to it as the "Dan Lev option," or even the "Dan Lev nuclear option." Some of us were on the receiving end of his hopes and frustrations in that critical swing period, which was not always easy, however much we agreed—or disagreed—with Dan's ideas; for a former carpenter, he could be oddly insouciant about practical implementation.

Dan's publications over the years can be roughly grouped into three phases. His early writing in the 1960s was about how Indonesia shaped its new legal system. This new system was, in part, based on the colonial framework, and yet also broke away from it, responding to the political context. His various articles and books covered such topics as the unification of the court system (in which the core issue was the abolition of institutionalized discrimination that underpinned colonial rule); the development of the religious courts (which focused on the political trade-off between self-administration for the religious community and political non-interference); and the role of *adat* law (an issue that raised questions about conflicting sources of legitimacy: modern state law versus *adat* law, as contrived by the Dutch and by the Supreme

Court). By the 1970s, Dan's articles and publications began to focus on the struggle for the rule of law. They covered the political Spring between the fall of Sukarno and MALARI (Malapetaka Lima Belas Januari, Fifteenth of January Disaster, 1974), when there was a concerted attempt to restore the rule of law and strengthen legal institutions. It is here, also, that Dan began a long engagement with emerging civil society forces, notably the legal aid movement and the struggle to strengthen the Bar (advocacy). In this period, Dan also published various comparative studies of Indonesia and Malaysia. The third phase of writing stretched through the 1980s and 1990s. Aside from his various (and many) smaller articles, his publications from these decades were about big themes ("constitutionalism," "human rights").

Dan himself, in his writing, acknowledges that there were some mild shifts in his views on some core issues. He says that for "too long" he accepted the view of Indonesian society (and Asian society, generally) as conflict adverse and "in favor of a harmonious resolution of tensions," but eventually found the evidence to the contrary overwhelming.² Thus, while his seminal article, "Judicial Institutions and Legal Culture,"³ still refers to a "cultural bend towards conciliation," Dan later says that culture "is subject to the whims of whoever is in a position to say what it is: political leaders and scholars," and therefore does not really explain anything at all.

This shift also responded to the way in which governments in Asia in the 1970s began to use "culture" as an instrument to curtail basic rights and representative government on grounds that these somehow were irreconcilable with Asian societies. This was a manipulated reconstruction of history that Dan fought relentlessly, and in his resistance to this concept, he was, for a long time, quite lonely, even among fellow academics. He would point out time and again that democracy and the rule of law can work in Indonesia, because they once did. He would emphasize again and again that democracy was brought down not by some inherent cultural discrepancy (as the New Order government liked to say), but by the military. He would refer time and again to the courageous and committed Indonesians who had staked all on the rule of law, many of whom he knew personally. In all this, Dan often returned to the 1950s not because of some false nostalgia, but because, "one of the accomplishments of the New Order was to wipe out that earlier history"⁴ in an act of willful and self-serving destruction. The 1950s needed to be rediscovered to expose the political manipulation that had been going on, to restore the self-confidence of society and institutions, and give basic rights their rightful place. The core theme in Dan's writings, ranging from his PhD about Guided Democracy (which is about representative government) to his work on unification of the courts (which is about basic rights), is the universality of basic rights.

Dan's writing is beautiful, and became more so with time. It is lucid and sparse. He disliked legal and academic jargon, and literary flourishes. He resisted baroque

² Daniel S. Lev, *Legal Evolution and Political Authority in Indonesia* (The Hague, Boston, MA: Kluwer Law International, 2000), p. 5.

³ Daniel S. Lev, "Judicial Institutions and Legal Culture," in *Culture and Politics in Indonesia*, ed. Claire Holt (Ithaca, NY: Cornell University Press, 1972).

⁴ "Washington's Support for the Indonesian Military Detrimental to Democracy: Interview with Daniel Lev," *Indonesia Alert* 4,3 (Fall 2004), at <http://lists.topica.com/lists/indonesia-act@igc.topica.com/read/message.html?sort=d&mid=811740620>, accessed March 13, 2012.

adjectives—"Javanese-ness," as he would call it. Contrary to what one might think, writing also was hard work for Dan and did not come at all easy. "Torture" is how he sometimes described it. The biography of Yap Thiam Hien took such an inordinate amount of time because of the high demands he imposed on himself. His sparse and spartan writing tends towards seriousness, and came at the cost of his great sense of humor, which shines through in his prose only very incidentally, to the point that some commented that it seemed as if Dan wrote and spoke different languages.

The most important factor that got in the way of writing was Dan's extraordinary generosity. Dan put an enormous amount of time in his friends, colleagues, and students, of which he had many and collected ever more, crossing communities, creeds, and generations. He entertained a massive and continuous flow of correspondence, commenting on papers, pushing funding proposals, writing letters of reference, advising, inspiring, supporting. His trunk calls were legendary, frequent, and long. He was extraordinarily protective and supportive, and, happily, quite critical, too. Not too long ago, a close Indonesian friend told me how badly he missed Dan: "He was the only person to whom I could say anything." It is something one also hears from his old Cornell friends, one of whom says of those days in the 1960s that Dan "was like an older brother—protective, kind, and critical."

His friendships ranged wide. They covered many countries, generations, and such an extraordinary wide range in society that it is impossible to do them justice here. He was close to Goenawan Mohammad, Fikri Jusuf, Ismid Hadad, Daniel Dhakidae, Umar Khayam, Paramita, and Aristides Katoppo. He had a lot of time and respect for Slamet Rahardjo and Soetandyo, as well as for Nurcholis Madjid, Sri Mamudji, and Tuti Hadiputranto. In and around LBH (Lembaga Bantuan Hukum, Legal Aid Indonesia), he often met with Minang Warman, Soenarto, Nanny Razak, Wiriadinata, Iwan Tirta, Albert Hasibuan, Arman, Tuti Hutagalung, Fauzy Ibrahim, Hoegeng, Harmaili Ismail, and the leaders of Peradin. He was close to the religious and the Chinese communities. He had good friends in Malaysia, both in the legal community, but also among architects.

From the 1970s onwards, Dan became more and more involved in civil society in Indonesia, initially through the lawyers/advocates, legal aid, and human rights movements. He was close to Poncke Princen, one of those right kind of rascals that Dan enjoyed. He admired Poncke's pioneering work on human rights and relished the stories of Poncke's double life as a pimp and shady dealer. Dan also strongly supported the early legal aid movement at LBH with Buyung Nasution, Suardi Tasrif, and others. Dan was very closely involved in the three seminal books in the 1990s that challenged the ideological legitimacy of the New Order. They closely reflected his thinking. (These were books by Adnan Buyung Nasution on constitutional government, Todung Mulya Lubis on human rights, and Marsillam Simandjuntak on the corporate nature of the 1945 constitution.⁵) He developed close and lasting friendships with institutional outsiders (who all too briefly became insiders after 1998),

⁵ Todung Mulya Lubis, *In Search of Human Rights: Legal-Political Dilemma's of Indonesia's New Order* (Jakarta: Gramedia, 1993); Adnan Buyung Nasution, *The Aspiration for Constitutional Government in Indonesia: A Socio-legal Study of the Indonesian Konstituante, 1956–1959* (Jakarta: Pustaka Sinar Harapan, 1992); and Marsillam Simandjuntak, *Pandangan Negara Integralistik. Sumbur, Unsur, dan Riwayatnya dalam Persiapan UUD 1945* (Jakarta: Grafiti 1994).

such as Marsillam Simandjuntak and Erman Rajagukguk. Over the years, the legal aid movement and advocates acquired a history of struggling out of the hole they dug for themselves, and then jumping back in. Dan was accepted as an independent credible arbiter by all sides, and was called in from time to time to help sort out the mess. Although the egos were sometimes hard to handle, it was a community he loved and believed to be enormously important for reform.

The overthrow of Suharto's regime in 1998 and the restoration of democratic government and the rule of law in Indonesia was a vindication of Dan's hopes and convictions. Even if he never lost his role as a critical observer and participant, in truth, Dan loved all of it: the reforms, civil society as an engine of reform, the brilliance of that new generation, the drive and energy they radiated, "this new generation of leaders who are beginning to engage socially and politically."⁶

After 1998, one of his former students, and now a respected lawyer, Arief Surowidjojo, together with friends, established some new legal sector NGOs (PSHK with Hukumonline and LeIP as affiliates).⁷ Together with other civil society groups (Dan would often mention Kontras, LBH, ICW, ICEL, and many others⁸), they became a new community with a strong commitment to rebuild the rule of law. It was a brilliant group, agile and politically sophisticated, which played a key role in the legal-constitutional-political reforms that were taking place; much of the current legal sector legislation and institutional reforms originated from that community. Dan visited these friends as often as he could and held out great hopes for them. And Dan was loved in return, as the members of the NGOs plied him with questions, sought out his advice, pushed him with strategies. "Now I notice over the last few years, there are young people, and I mean really young people, in their twenties, who are beginning to address [the history of the parliamentary order]."⁹ Dan left many of his papers and books to these NGOs, where they became the core collection of the D. S. Lev library in Jakarta, which is the largest privately held law collection in the country open to the public. Generally, Indonesia after 1998 gave Dan enormous hope.

Modern Indonesia was a welcome change from the situation back home in that period. Dan was deeply angered by the Bush years. It affirmed a caution that he often entertained, having lived through the Youngstown corruption, the racial conflicts at Cornell, and the nightmares of Vietnam and Watergate. In his somber moods, Dan could say pretty harsh things about the United States and democracy, however much he had fought for such democracy in Indonesia. He was prone to comment that the American constitutional model had not been successfully replicated anywhere else, and he would question how successful it really was. In reality, the city on the hill, as an ideal, never lost its luster for him. For Dan, just like George Kahin, Yap Thiam Hien, or

⁶ "Washington's Support for the Indonesian Military Detrimental to Democracy," *Indonesia Alert*.

⁷ PSHK: Pusat Studi Hukum & Kebijakan Indonesia, The Indonesian Centre for Law and Policy Studies (www.pshk.or.id/). LeIP: Lembaga Kajian dan Advokasi untuk Independensi Peradilan, The Institute for Research and Advocacy on Judicial Independence (www.leip.or.id/).

⁸ Kontras: Komisi untuk Orang Hilang dan Korban Tindak Kekerasan, Commission for the Disappeared and Victims of Violence (www.kontras.org) ICW: Indonesia Corruption Watch (<http://antikorupsi.org>). ICEL: Indonesian Centre for Environmental Law (www.icel.or.id)

⁹ "Washington's Support for the Indonesian Military Detrimental to Democracy," *Indonesia Alert*.

Dan's own mother, the goal always was to try and reach the ideal through the integrity of his actions.

Dan was a man of many times and many places. He seems to have spoken all our languages. Through the values by which he lived, we can all call him our own, and thus shall he be remembered.

Sebastiaan Pompe
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